
OLR Bill Analysis

sHB 6399

AN ACT CONCERNING CHILDREN IN THE JUVENILE JUSTICE SYSTEM.

SUMMARY:

This bill generally prohibits anyone from using shackles, handcuffs, or other mechanical devices to physically restrain a child alleged to be delinquent before that child has been adjudicated delinquent. The only exception is when the judge determines that such restraints are needed to ensure public safety. The bar does not apply when a child is being transported from one place to another (§ 1).

The bill prohibits any admission, confession, or statement made verbally or in writing by a child under age 16 to a police or juvenile court officer from being admissible in any criminal prosecution of the child unless (1) the child's parent or guardian is present and (2) the child and the caretaker adult have been advised of their Miranda-type rights (see BACKGROUND). Currently, this prohibition applies only to proceedings concerning the child's alleged delinquency (§ 2).

Other than for a serious juvenile offense (SJO), the bill eliminates a requirement that a child or his or her parent petition the Superior Court to have the child's record erased for (1) a delinquency conviction, (2) an adjudication as a member of a family with service needs (FWSN), or (3) a admitting to committing a delinquent act.

The bill requires writs of habeus corpus on behalf of juveniles (1) convicted of delinquent acts and (2) committed to DCF or placed on probation to be filed in the Superior Court in the judicial district where the child's placement or commitment was ordered rather than the judicial district where the child is placed or is on probation. And it provides that the civil session of the Superior Court is the proper venue for hearing these applications.

The bill allows the DCF commissioner to place children or youths who have been under her custody in a vocational probation program if they have graduated from high school.

The bill ties eligibility for public defender services to the parent's or guardian's income as a percentage of the federal poverty level. And it entitles the Public Defender Services Commission to recover costs of providing such services to someone who is not indigent.

Finally, the bill indemnifies attorneys that the court appoints as Public Defender Services guardians ad litem (GALs) from personal liability from claims against the state in the same way it already does for attorneys appointed by The Office of Chief Public Defender as GALs (§ 9). (The bill does not make a parallel change in the statute that governs immunity of state employees, CGS § 4-165(b)(1)(A)).

EFFECTIVE DATE: October 1, 2013, except the provision concerning personal indemnification of attorneys is effective upon passage.

ERASURE OF JUVENILE DELINQUENCY RECORDS (§ 3)

Under current law, if (1) a child is convicted of a delinquent act, is adjudicated a member of a FWSN (e.g., truant), or signs an admission of committing a delinquent act and (2) the child has been discharged from the Superior Court's supervision, DCF custody, or the care of any other institution or agency to which the court has admitted the child, the child or his or her parent or guardian may petition the court to have the child's juvenile record expunged. The court must comply with the request if certain conditions exist (see BACKGROUND).

Under the bill, the court must automatically, without being petitioned, order the records for all juvenile delinquency cases, except those for SJOs, expunged on the second day of each January or on a date the court designates. Petitions are still required for SJOs' record erasures.

HABEUS CORPUS FOR CHALLENGING PLACEMENT CONDITIONS (§§ 4 & 5)

The bill requires writs of habeus corpus challenging the conditions of certain delinquency related placements to be filed in the judicial district where the placement was ordered. By law, (1) any child convicted as delinquent and committed to DCF and (2) anyone who is under the supervision of a juvenile probation officer while under probation or under a suspended commitment to DCF can challenge the legality of the conditions of his or her commitment or placement by applying for a writ of habeus corpus with the Superior Court.

The bill authorizes the application to be made by the (1) convicted child or person on probation or (2) the child or person's parent, guardian, or counsel on their behalf. The application must name the DCF commissioner as the respondent. The bill provides that the determination of the legality of the conditions may be made only by the Superior Court for Juvenile Matters-Civil Session.

Current law requires writs to be filed with the Superior Court for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of his or her liberty. But applications made by or on behalf of an inmate or prisoner confined in a correctional facility must be made to the Superior Court for the Tolland judicial district CGS § 52-466(a)(2).

VOCATIONAL PAROLE FOR JUVENILES WHO HAVE GRADUATED FROM HIGH SCHOOL (§ 6)

The bill allows the DCF commissioner to place on vocational parole under the supervision of a DCF employee a child or youth (1) committed to its custody for committing a delinquent act and (2) who has graduated from high school. Under current law, DCF may make such placements only for juveniles committed to DCF who are at least 14 years old and cannot benefit from continued school attendance. By law, committed juveniles remain in DCF custody until the (1) end of the court-ordered commitment period or (2) child or youth's 20th birthday, whichever is earlier.

PUBLIC DEFENDER SERVICES FOR INDIGENT (§ 7)

By law, the state must provide legal services and guardians ad litem

(GALs) to children, youths, and indigent respondents in family relations matters in which the state has been ordered to pay the cost of such. For indigent respondents, this obligation applies only when the matter is related to paternity or contempt. The law also requires the state to provide these services and GALs to children, youths, and indigent legal parties in all proceedings before the Superior Court for Juvenile Matters.

A judge determines eligibility for public defender services for these cases. Currently, eligibility is determined based on whether the child or youth or the child or youth's parent or guardian is unable to afford counsel. Under the bill, these individuals must also be indigent according to the income and eligibility guidelines the Public Defender Services Commission promulgates.

The current income eligibility guidelines for public defender services are based on a percentage of the federal poverty level (FPL). For example, in a delinquency matter, in a single parent household with one dependent, gross annual income currently may not exceed \$30,260 for that family to qualify for public defender services. That equates to 200% of the FPL for that family's size. (Presumably, anyone with income below these threshold amounts would be deemed indigent under the bill.)

The bill makes technical, conforming changes.

RECOVERIES OF LEGAL SERVICE COSTS (§ 8)

The bill entitles the Public Defender Services Commission to recover from the Judicial Department the reasonable cost of legal services provided by a public defender in any proceeding where (1) a court has appointed counsel over the objections of the Office of the Chief Public Defender (OCPD) and (2) OCPD determined that the person was not indigent in accordance with the OCPD income and eligibility guidelines. The amount recovered is based on the schedule of reasonable charges for public defender services.

BACKGROUND

Inadmissibility of Confessions Unless Rights Advised

The law generally prohibits the admission of confessions made by children under age 16 unless they, and their parent or guardian, have been advised (1) of the right to retain counsel, (2) of the child's right to refuse to make a statement, and (3) that any statements the child makes can be used against him or her.

Conditions for Records Erasure

For the court to erase a juvenile's record, the following conditions must exist:

1. at least two (four for SJOs) years must have elapsed since the child was discharged,
2. no subsequent juvenile proceeding or adult criminal proceeding is pending against the child,
3. the child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during the two- (or four-) year period,
4. the child has not been convicted as an adult of a felony or misdemeanor during this period, and
5. the child has reached adulthood.

Family with Service Needs (FWSN)

A family with service needs is a family that includes a child who is at least age seven and under age 18 and who (1) has, without just cause, run away from home; (2) is beyond the control of his or her parent or other guardian; (3) has engaged in indecent or immoral conduct; (4) is truant or habitually truant or who, while in school, continuously and overtly defies school rules and regulations; or (5) is age 13 or older and is sexually active with someone who is at least age 13 but under age 16.

COMMITTEE ACTION

Children Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/07/2013)